

## ARTICLE 5

### Drawing and Empaneling Jurors

#### Section

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#### 38-5-1. Qualification of jurors.

A. A person who is at least eighteen years of age, a United States citizen, a resident of New Mexico residing in the county for which a jury may be convened is eligible and may be summoned for service as a juror by the courts, unless the person is incapable of rendering jury service because of:

- (1) physical or mental illness or infirmity; or
- (2) undue or extreme physical or financial hardship.

B. A person who was convicted of a felony and who meets all other requirements for eligibility may be summoned for jury service if the person has successfully completed all conditions of the sentence imposed for the felony, including conditions for probation or parole.

**History:** 1953 Comp., § 19-1-1, enacted by Laws 1969, ch. 222, § 1; 1991, ch. 71, § 1; 2005, ch. 107, § 4; 2006, ch. 101, § 1.

#### 38-5-2. Exemption from jury service; excusals; service of disqualified juror.

A. A person who has served as a member of a petit jury panel or a grand jury in either state or federal courts within the preceding thirty-six months shall be exempt from sitting or serving as a juror in a court of this state when the person requests to be exempted from service by reason of the exemption granted by this subsection.

B. A person who is seventy-five years of age or older who files an affidavit requesting an exemption from jury service with a local court shall be permanently exempt from jury service.

C. A person may be excused from jury service at the discretion of the judge or the judge's designee, with or without the person's personal attendance upon the court, if:

- (1) jury service would cause undue or extreme physical or financial hardship to the prospective juror or to a person under the prospective juror's care or supervision;
- (2) the person has an emergency that renders the person unable to perform jury service; or
- (3) the person presents other satisfactory evidence to the judge or the judge's designee.

D. A person requesting an exemption or an excuse from jury service shall take all necessary action to obtain a ruling on the request no later than the date on which the person is scheduled to appear for jury duty.

E. The judge, in the judge's discretion, upon granting any excuse, may disallow the fees and mileage of the person excused.

F. The service upon a jury of a person disqualified shall, of itself, not vitiate any indictment found or any verdict rendered by that jury, unless actual injury to the person complaining of the injury is shown.

G. As used in this section and Section [38-5-1](#) NMSA 1978, "undue or extreme physical or financial hardship":

- (1) means circumstances in which a person would:
  - (a) be required to abandon another person under the person's care or supervision due to the extreme difficulty of obtaining an appropriate substitute caregiver during the period of jury service;
  - (b) incur costs that would have a substantial adverse impact on the payment of necessary daily living expenses of the person or the person's dependent; or
  - (c) suffer physical hardship that would result in illness or disease; and
- (2) does not exist solely because a prospective juror will be absent from employment.

History: 1953 Comp., § 19-1-2, enacted by Laws 1973, ch. 150, § 1; 1979, ch. 173, § 1; 2005, ch. 107, § 5; 2009, ch. 26, § 1.

### **38-5-3. Source for juror selection.**

A. Each county clerk shall make available to the secretary of state a database of registered voters of the clerk's county. The secretary of state shall preserve and make available to the department of information technology, by electronic media, a database of New Mexico registered voters, by county, which shall be updated every six months. The director of the motor vehicle division of the taxation and revenue department shall make available by electronic media to the department of information technology a database of driver's license holders in each county, which shall be updated every six months. The secretary of taxation and revenue shall make available to the department of information technology, by electronic media, a database of New Mexico personal income tax filers by county, which shall be updated every six months. The updates shall occur in June and December.

B. The department of information technology shall program the merger of the registered voter, driver's license and personal income tax filer databases from each county to form a master jury

database and write a computer program so that a random selection of jurors can be made. A discrimination shall not be exercised except for the elimination of persons who are not eligible for jury service. The administrative office of the courts shall provide specifications for the merging of the registered voter, driver's license and personal income tax filer databases to form the master jury database. The master jury database shall be the database that produces the random jury list for the selection of petit or grand jurors for the state courts.

C. The secretary of veterans' services and the adjutant general of the department of military affairs shall make available, by electronic media, to the administrative office of the courts a database of service members who were killed or missing in action during military service, which shall be updated every six months. The administrative office of the courts shall remove the names of service members who were killed or missing in action during military service from the master jury database that produces the random jury list for the state courts.

D. The court shall, by order, designate the number of potential jurors to be selected and the date on which the jurors are to report for empaneling. Within fifteen days after receipt of a copy of the order, the administrative office of the courts shall provide the random jury list to the court. The department of information technology shall print the random jury list and jury summons mailer forms within ten days after receiving the request from the administrative office of the courts. Upon issuance of the order, the department of information technology shall draw from the most current registered voter, driver's license and personal income tax filer databases to create the random jury list.

E. The department of information technology may transfer the master jury database to a court that has compatible equipment to accept such a transfer. The court accepting the master jury database shall transfer the information to a programmed computer used for the random selection of petit or grand jurors.

History: 1978 Comp., § 38-5-3, enacted by Laws 1991, ch. 71, § 2; 2005, ch. 107, § 6; 2007, ch. 290, § 25; 2009, ch. 157, § 1; 2011, ch. 26, § 1.

### **38-5-5. Jury tampering; penalties.**

Jury tampering consists of:

- A. the willful placing of names in a jury wheel or removal of the names other than in accordance with law;
- B. the selection or drawing of jurors other than in accordance with law;
- C. the attempt to threaten, coerce or induce a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment; or
- D. the threatening, coercing or inducing of a trial juror to vote for a false verdict or a grand juror to vote for no indictment or for a false indictment.

Whoever violates the provisions of Subsection A or B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of [Section 31-19-1](#) NMSA 1978. Whoever violates the provisions of Subsection C of this section is guilty of a third degree felony and shall be sentenced pursuant to the provisions of [Section 31-18-15](#) NMSA 1978. Whoever violates the provisions of Subsection D of this section is guilty of a second degree felony and shall be sentenced pursuant to the provisions of [Section 31-18-15](#) NMSA 1978.

**History:** 1953 Comp., § 19-1-5, enacted by Laws 1969, ch. 222, § 5; 1989, ch. 343, § 1; 1997, ch. 208, § 2.

### **38-5-5.1. Legislative declaration.**

It is the policy of this state that all qualified citizens have an obligation to serve on juries and to give truthful information concerning attitudes, opinions and feelings about topics relevant to the proceeding for which they are called to serve when summoned by the courts of this state.

**History:** Laws 2005, ch. 107, § 2.

### **38-5-10. Summoning of jurors; claiming exemption.**

Upon drawing a list of jurors for grand jury or petit jury service, the clerk shall issue a summons for each juror ordering his attendance at a time and place as fixed by the district judge or magistrate ordering the drawing. The summons may be served by first class mail or in a manner provided for the service of civil process. A willful failure to appear as ordered in the summons is a petty misdemeanor. Accompanying each summons, the clerk of the court shall submit for the information of the jurors the listing of those classes of persons or qualifications provided by law under which an exemption from jury service may be claimed. Jurors shall be provided a form upon which they may state the facts supporting their eligibility to claim exemption from jury service and to express a claim for exemption.

**History:** 1953 Comp., § 19-1-10, enacted by Laws 1969, ch. 222, § 10; 1991, ch. 71, § 3.

#### **38-5-10.1. Postponement of petit jury service.**

A. A person scheduled to appear for service on a petit jury may request a postponement of the date of initial appearance for jury service. The request for postponement shall be granted if the juror:

- (1) has not previously been granted a postponement; and
- (2) agrees to a future date, approved by the court, when the juror will appear for jury service that is not more than six months after the date on which the prospective juror originally was called to serve.

B. A subsequent request to postpone jury service may be approved by the court only in the event of an emergency that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a subsequent postponement, the prospective juror must agree to a future date on which the juror will appear for jury service within six months of the postponement.

C. A court shall postpone and reschedule the service of a summoned juror, without affecting the summoned juror's right to request a postponement under Subsections A and B of this section, if the summoned juror is:

- (1) employed by an employer with five or fewer full-time employees, or their equivalent, and another employee of the same employer is summoned to appear during the same period;
- (2) the only person performing particular services for a business, commercial or agricultural

enterprise and whose services are so essential to the operations of the business, commercial or agricultural enterprise that the enterprise must close or cease to function if the person is required to perform jury duty; or

(3) required to attend to an emergency as determined by the judge.

History: Laws 2005, ch. 107, § 3.

#### **38-5-11. Qualifying jury panels.**

A. The court shall empanel jurors in a random manner. The judge or the judge's designee shall preside over the empaneling of a petit jury panel. The district judge or the judge's designee shall preside over the empaneling of the grand jury panel. Jurors who appear for service shall be questioned under oath as to their eligibility for jury service by the judge or the judge's designee. Claims of exemption, requests for excuse from service or postponement of service shall be ruled upon by the judge or the judge's designee.

B. The judge or the judge's designee shall submit questionnaires to prospective jurors to:

(1) obtain any information that will aid the court in ruling on requests for exemption or excuse from service or postponement of service;

(2) aid the court and the parties in voir dire examination of jurors or in determining a juror's qualifications to serve on a particular petit jury panel, trial jury or grand jury; or

(3) aid in the determination of challenges for cause and peremptory challenges.

C. The judge or the judge's designee shall certify a numbered list of the jury panel members' names when qualified. The certified list of jurors and the questionnaires obtained from jurors shall be made available for inspection and copying by a party to a pending proceeding or their attorney or to any person having good cause for access to the list and the questionnaires.

**History:** 1953 Comp., § 19-1-11, enacted by Laws 1969, ch. 222, § 11; 1970, ch. 40, § 1; 1991, ch. 71, § 4; 2005, ch. 107, § 7.

#### **38-5-12. Petit jury panels; number to be qualified; period of service; time for summoning.**

A. The judge shall determine the number of jurors to be summoned for service, the date and time for the appearance of jurors for qualification, the number of jurors to be qualified to provide panels of jurors for trial service and the size of trial jury panels. Procedures such as the use of alternate jury panels should be established where appropriate to lessen the burden of jury service on persons retained on petit jury panels. Jurors may be drawn, summoned and qualified by the judge at any time to supplement jury panels requiring replacement or augmentation. Petit jury panels may be qualified and may serve as the trial needs of the court require without regard to court terms.

B. The supreme court shall establish, by rule, the appropriate length of jury terms. The court shall consider the number of trials held, the availability of jurors and the administrative and financial impact.

History: 1953 Comp., § 19-1-12, enacted by Laws 1969, ch. 222, § 12; 1970, ch. 40, § 2; 1971, ch. 136, § 1; 1977, ch. 382, § 1; 1979, ch. 173, § 2; 2005, ch. 107, § 8.

### **38-5-13. Drawing and qualifying trial jury.**

The district court of each county shall maintain a list of the names of the jurors duly empaneled and present for the trial of a case. The judge shall cause the names to be randomly selected until sufficient names have been drawn to provide the number of jurors required for the trial. The name and number of each juror shall be announced. Twelve or six jurors shall compose a petit jury in the district courts for the trial of civil causes. Twelve jurors shall compose a petit jury in criminal and children's court cases. Magistrate and metropolitan jury court selection shall be conducted in accordance with supreme court rules.

**History:** 1953 Comp., § 19-1-13, enacted by Laws 1969, ch. 222, § 13; 1991, ch. 71, § 5; 2005, ch. 107, § 9.

### **38-5-14. Exercising challenges to jurors.**

The court shall permit the parties to a case to express in the record of trial any challenge to a juror for good cause. The court shall rule upon the challenge and may excuse any juror for good cause. Challenges for good cause and peremptory challenges shall be made outside the hearing of the jury. The party making a challenge shall not be announced or disclosed to the jury panel, but each challenge shall be recorded by the clerk and placed in the case file. In civil trials, the opposing parties shall exercise peremptory challenges alternately. In juvenile or criminal cases, the state or prosecution shall pass or accept or make any peremptory challenge as to each juror before the defendant is called upon to pass, accept or exercise a peremptory challenge as to the juror. In civil cases, each party may challenge five jurors peremptorily. When there are two or more parties defendant or parties plaintiff, they shall exercise their peremptory challenges jointly, and if all cannot agree on a challenge desired by one party on a side, then the challenge is forfeited. However, if the relief sought by or against the parties on the same side of a civil case differs, or if their interests are diverse, or if cross-claims are to be tried, the court shall allow each party on that side of the suit five peremptory challenges.

**History:** 1953 Comp., § 19-1-14, enacted by Laws 1969, ch. 222, § 14; 1991, ch. 71, § 6.

### **38-5-15. Mileage and compensation for jurors.**

Persons summoned for jury service and jurors shall be reimbursed for travel from their place of actual residence to the courthouse when their attendance is ordered, at the rate allowed public officers and employees per mile of necessary travel. Persons summoned for jury service and jurors shall be compensated for their time in travel, attendance and service at the highest prevailing state minimum wage rate.

**History:** 1953 Comp., § 19-1-15, enacted by Laws 1969, ch. 222, § 15; 1970, ch. 40, § 3; 1976 (S.S.), ch. 16, § 1; 1979, ch. 285, § 1; 1991, ch. 71, § 7.

### **38-5-16. Challenge to jury array.**

Any party to a civil action or defendant in a criminal action, at the opening of trial and before the empaneling of the jury is commenced, by motion to quash the jury array, may challenge the jury panel on the ground that the members thereof were not selected substantially in accordance with law. If the motion is sustained, then the trial will be stayed until a jury panel has been selected

and qualified in accordance with law. Such a challenge is waived if not raised before the trial jury panel has been sworn and selection of the trial jury commenced.

**History:** 1953 Comp., § 19-1-16, enacted by Laws 1969, ch. 222, § 16.

### **38-5-17. [Verdict by ten or more jurors; polling jury.]**

In civil causes when the jury, or as many as ten of them, have agreed upon a verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman; the verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict; if upon such inquiry or polling, more than two of the jurors disagree thereto, the jury must be sent out again, but if no such disagreement be expressed, the verdict is complete and the jury discharged from the case.

**History:** 1978 Comp. § 38-5-17, enacted by Laws 1933, ch. 98, § 1.

### **38-5-18. Employer prohibited from penalizing employee for jury service.**

A. An employer shall not deprive an employee of employment or threaten or otherwise coerce the employee because the employee receives a summons for jury service, responds to the summons, serves as a juror or attends court for prospective jury service.

B. An employer shall not require or request an employee to use annual, vacation or sick leave for time spent responding to a summons for jury service, participating in the jury selection process or serving on a jury. Nothing in this subsection requires an employer to provide annual, vacation or sick leave to employees who are not otherwise entitled to those benefits under company policies.

History: Laws 1979, ch. 47, § 1; 2005, ch. 107, § 10.

### **38-5-19. Penalty.**

An employer, either individually or through his agent, who violates Section 1 [[38-5-18](#) NMSA 1978] of this act is guilty of a petty misdemeanor.

**History:** Laws 1979, ch. 47, § 2.